

THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No.10967 of 2002

Dated: 9th November, 2006

Between:

T.V.L.Narasimha Rao.

.....PETITIONER

AND

Visakhapatnam Dock Labour Board,
Visakhapatnam, rep by its chairman.

....RESPONDENTS

**THE HONOURABLE SRI JUSTICE
N.V.RAMANA**

W.P.No.10967 of 2006

ORDER:

This writ petition is filed questioning the final orders dated 15-12-2001 of the respondent/Chairman, Visakhapatnam Dock Labour Board issued under F.R. 54-B of The A.P. Fundamental Rules (for short 'the Rules'). By the said final orders the respondent treated the amount of subsistence allowance of the petitioner during the period of suspension i.e., from 10-11-1999 to 23-5-2001 as proportionate pay and allowance and the period of suspension as on duty for all purposes except pay and allowances.

The petitioner joined the service of the respondent in the year 1971 as a clerk and worked sincerely as such till he was suspended on 10-11-1999 on the ground that he was implicated in a Criminal Case in S.C.No.96 of 2006 under Section 354 of I.P.C and was arrested in that regard. He states that after he was acquitted of the criminal case, he made a representation to the respondent on 29-3-2001 seeking reinstatement. He further states that during the period of suspension also pending the criminal case he made a request for lifting the suspension and the respondent on 23-5-2001 passed orders of resumption and accordingly the suspension was lifted. Thereafter a notice dated 11-10-2001 under F.R.54-B of the Rules was issued to the petitioner for passing appropriate orders regarding the period of suspension. By the said notice the respondent proposed to treat the period of suspension on duty for all purposes except for pay and

allowances other than the subsistence allowance already paid. Petitioner on 17-10-2001 replied to the said show cause notice dated 11-10-2001 pleading that he is acquitted in the criminal case and hence he is entitled for full salary for the entire period of suspension. But, the respondent without considering the reply of the petitioner by the impugned order dated 15-12-2001 confirmed the proposal made in the show cause notice dated 11-10-2001. Petitioner again on 14-2-2002 represented to the respondent for fresh consideration of his case, but was unsuccessful.

Learned counsel relying on F.R. 54-B (3) of the Rules submitted that if the competent authority to order reinstatement in its opinion feels that the suspension is wholly unjustified then the employee is entitled for full pay and allowances as if he had not been suspended. The counsel further submitted that the order of the respondent is not a reasoned order and is passed without considering the representation filed by the petitioner and without taking into consideration Rule F.R.54-B (3) of the Rules.

However, learned counsel for the respondent refuted the contention of the learned counsel for the petitioner and submitted that the impugned order is a reasonable order and needs no interference.

Heard the learned counsel for the petitioner as also the learned counsel for the respondent and perused the impugned order and Rule F.R. 54-B (3) of the Rules. Rule F.R. 54-B (3) of the Rules read as under:

“ Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may after giving him an opportunity to make his representation (within sixty days from the date on which communication to this regard is served on him) and after considering the representation, if any submitted by him, direct for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay (only such amount (not being the whole) of such pay and allowances as it may determine) ”.

Rule F.R. 54-B (3) of the Rules is specific that when the competent authority to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall be paid the full pay and allowances to which he would have been entitled, had he not been suspended. But, the impugned order indicates that the respondent has not considered the case of the petitioner in terms of F.R.54-B (3) of the Rules while passing the impugned order. Admittedly, the respondent in view of the acquittal of the petitioner in a criminal case felt that suspension is wholly unjustified and ordered resumption of the petitioner by order dated 23-5-2001 and the petitioner resumed to duty on 25-5-2001. The respondent after finding that the suspension is wholly unjustified ought not to have passed the impugned order, more so, when the petitioner-raised objection in his representation dated 17-10-2001 to the show cause notice dated 11-10-2001 that he is entitled to full pay and allowances for the entire period under F.R 54-B (3) of the Rules, but not under proviso to FR 54-B as proposed in the notice. In the circumstances, this court feels it a fit case where the petitioner can be directed to file appeal against the impugned order. Accordingly, the writ petition is disposed of with the direction as under:

The petitioner is directed to file appeal to the Board of Members of the Dock Labour Board, Visakhapatnam and on such appeal being filed by the petitioner, the Board of Members of the Dock Labour Board shall consider the case of the petitioner in the light of Rule 54-B (3) of the Rules, in accordance with law, and pass appropriate orders.

(N.V. RAMANA, J.)

Date:09th November, 2006.

GRK

